Supreme Court, U.S.
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No. 97-78

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

JOHN YIAMOUYIANNIS,

Petitioner,

v.

WILLIAM LOWE, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF OHIO

BRIEF IN OPPOSITION

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8 pp

QUESTION PRESENTED

Whether Ohio courts appropriately upheld the right of county fair officials to enforce time, place and manner restrictions on fair exhibitors wishing to solicit and distribute literature to fair patrons, based upon Ohio Revised Code § 1711.02 and fair exhibitor rules, under *Heffron v. International Society of Krishna Consciousness, Inc.*, 452 U.S. 640 (1981).

LIST OF PARTIES

The Petition imprecisely lists the parties.

Respondents are:

William Lowe

Christopher Frentsos[1]

Delaware County Agricultural Society

"The Delaware County Fair Board," named as a respondent by Petitioner, is a colloquialism for the Delaware County Agricultural Society, which operates the Delaware County Fair, and is not a separate legal entity.

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[1] Misspelled in the petition.

STATEMENT OF THE CASE

This case arises out of Petitioner's willful violation of time, place, and manner restrictions on speech imposed by Ohio Revised Code § 1711.12[2] and Exhibitor Rule 2[3] of the Delaware County Fair (the "Fair"). Rather than confine his campaign solicitations and literature distributions to his assigned exhibitor booth, as required by statute and Fair rule, Petitioner persisted in roving the fairgrounds to distribute campaign materials to Fair patrons. Petitioner was ultimately ejected from the fairgrounds when, after repeated warnings, he flatly refused to abide by the statute and rule.

Petitioner's litany of claims against Respondents was dismissed on summary judgment,[4] which was affirmed by the Ohio court of appeals. The Supreme Court of Ohio declined to review the case, deciding that it does not present a substantial constitutional question.

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[2] Ohio Revised Code § 1711.12 provides:

> During an Ohio state fair or county or independent agricultural society fair, no person shall . . . within the fairground, engage in any solicitation more than four feet from a concession or booth assigned to such person, except that vendors under contract may solicit within the immediate area of a grandstand or coliseum for the purpose of vending food, soft drinks, and souvenirs directly related to the program attraction.

[3] Delaware County Fair Exhibitor Rule 2 provides:

> Confine all activities to the space you have rented. Roving vendors are prohibited by Ohio law. You may not use the aisles or walkways to sell or demonstrate your product or service.

[4] Contrary to Petitioner's urging, the "facts alleged" in the petition need not be assumed to be true "for summary judgment purposes." In ruling against Petitioner on summary judgment, the courts below properly found that no genuine issue of material fact exists and that judgment could be entered in favor of Respondents as a matter of law.

Notwithstanding Petitioner's attempts to enrobe his claims in the United States Constitution, no constitutional question is presented worthy of the Court's review. The Court already has evaluated the type of time, place, and manner restrictions at issue here and found them valid under the First Amendment. *See Heffron v. Int'l Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981). Indeed, Ohio fair rules on solicitation similar to those at issue here were previously upheld in *International Soc. for Krishna Consciousness, Inc. v. Evans*, 440 F. Supp. 414 (S.D. Ohio 1977) (construing time, place, and manner restrictions at the Ohio State Fair).

Federal courts have repeatedly upheld restrictions on an individual's right to distribute literature at a fair, whether the literature is free or for sale. Petitioner's ability to distribute his materials from an assigned booth provided a sufficient alternate channel. Petitioner, moreover, contractually agreed to the restrictions of Exhibitor Rule 2 in applying for a booth at the Fair. The actions taken against Petitioner were strictly the result of Petitioner's willful refusal to abide by time, place, and manner restrictions followed by every other exhibitor and evenhandedly enforced by Respondents.

REASONS FOR DENYING THE WRIT

1. Petitioner Violated Valid Time, Place and Manner Restrictions

The intent and effect of the fair exhibitor rule and the Ohio statute are to regulate the time, place, and manner of speech at fairs to maintain order and safety among fair patrons and exhibitors. Such rules to preserve safety and convenience in a

public forum, and to maintain orderly movement of a fair crowd, are valid under the First Amendment. *See Heffron*, 452 U.S. at 649-650. The restrictions are valid even if the materials were being given away and not sold. *See Heffron*, 452 U.S. at 652-654. The Fair has the same substantial interest in the orderly movement and control of Fair crowds regardless of whether exhibitors are selling or giving away materials. The political (as contrasted to commercial) nature of Petitioner's speech is not a factor. *See Heffron*, 452 U.S. at 655 (upholding restrictions on exhibitors whether they are "commercial, religious, or political").

United States v. Kokinda, 497 U.S. 720 (1990), upon which Petitioner principally relies, concerns the definition of a Postal Service sidewalk as a public forum. *Kokinda* does not mandate the distinction between sales activity, literature distribution, and vote solicitation urged by Petitioner. *Heffron*, in fact, specifically upheld "confining distribution, selling, and fund solicitation activities to fixed locations." 452 U.S. at 654.

Petitioner applied for and was assigned a booth from which he was entitled to campaign and distribute materials. The booth system has been approved by federal courts as "the best available means of accommodating the conflicting interests of the exhibitors in free speech." *Evans*, 440 F. Supp. at 425; *see also Heffron*, 452 U.S. at 650; *Edwards v. Maryland State Fair and Ag. Soc.*, 476 F. Supp. 153 (D. Md. 1979). No constitutional question exists, therefore, as to whether Ohio Rev. Code § 1711.12 and Exhibitor Rule 2 are valid time, place, and manner restrictions applicable to Fair exhibitors including political candidates such as Petitioner.

2. Respondents Enforced Solicitation Restrictions in a Nondiscriminatory Manner

Candidates other than Petitioner who wished to solicit Fair patrons and distribute literature were also required to register for a fair booth and confine their activities to the booth. The record is clear, and Petitioner even admits, that the only other candidate known to have been distributing campaign literature outside his assigned booth was also asked to stop doing so. Petitioner and the other candidate both received multiple warnings about their behavior. Only Petitioner, and no other exhibitor, ultimately refused to comply with Ohio Rev. Code § 1711.12 and Exhibitor Rule 2. *Only* after Petitioner adamantly refused to cease distributing campaign materials outside his booth was he ejected from the Fair. *Only* after Petitioner refused to leave the fairgrounds was he arrested and forcibly removed. The difference in treatment between the two candidates was purely a result of Petitioner's conscious decision to disobey an Ohio statute, disobey Fair exhibitor rules, and disobey the instructions of Fair officials.

As the Ohio court of appeals stated after review of the record, "Petitioner's open refusal to comply with Rule No. 2 distinguishes him from [the other candidate] and defeats his claim regarding unconstitutional discrimination in the enforcement of Rule No. 2." The opinion of the Ohio appellate court on this issue was correct.

3. Petitioner Identifies No Conflict Or Confusion Among The Courts

Petitioner does not contend that the Supreme Court of Ohio "decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals." *See* Sup. Ct. Rule 10(b). Petitioner does not argue that the Supreme Court of Ohio "decided an important federal question in a way that conflicts with relevant decisions of this Court." *Id.* 10(c). At most, Petitioner argues that the Supreme Court of Ohio upheld erroneous factual findings or misapplied a properly stated rule of law, *i.e.* the holding in *Heffron*.

Petitioner fails to present a compelling reason for the Court to revisit previously decided federal questions.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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